

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: MINNESOTA

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Temporary Management: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

☒ Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

☐ Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

TN No. 95-32

Supersedes

TN No. --

Approval Date: 10-26-95

Effective Date: 07/01/95

STATE: MINNESOTA  
Effective: July 1, 1989  
TN: 89-56  
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**OFFICIAL**

ATTACHMENT 4.35-C  
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## RECEIVERSHIP OF ICFs/MR

### VOLUNTARY RECEIVERSHIP.

**Section 1.010 Receivership agreement.** A majority of controlling individuals of a residential program may at any time ask the Department to assume operation of the residential program through appointment of a receiver. On receiving the request, the Department may enter into an agreement with a majority of controlling individuals and provide for the appointment of a receiver to operate the program under conditions acceptable to both the Department and the majority of controlling individuals. The agreement will specify the terms and conditions of the receivership and preserve the rights of the persons being served by the program. A receivership set up under this section terminates at the time specified by the parties to the agreement or 30 days after either of the parties gives written notice to the other party of termination of the receivership agreement.

**Section 1.020 Payment for receivership.** The Department in consultation with the Department of Health may establish a receivership fee payment in accordance with Attachment 4.19-D.

### INVOLUNTARY RECEIVERSHIP.

**Section 2.010 Application.** In addition to any other remedy provided by law, the Department may petition the district court in the county where the program is located for an order directing the controlling individuals of the program to show cause why the Department or the Department's designated representative should not be appointed receiver to operate the program. The petition must contain proof by affidavit: (1) that the Department has either begun license suspension or revocation proceedings, suspended or revoked a license, or has decided to deny an application for licensure of the program; or (2) it appears to the Department that the health, safety, or rights of the residents may be in jeopardy because of the manner in which the program may close, the program's financial condition, or violations committed by the program of federal or state laws or rules. If the license holder, applicant or controlling individual operates more than one program, the Department's petition will specify and be limited to the residential program for which it seeks receivership. The affidavit submitted must set forth alternatives to receivership that have been considered, including rate adjustments. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the program administrator and to the persons designated as agents by the controlling individuals to accept service on their behalf.

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**Section 2.020 Appointment of receiver.** If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the program, the court will appoint a receiver to operate the residential program. In the event that no receiver can be found who meets the conditions of this section, the Department or Department's designated representative may serve as the receiver. The court shall determine a fair monthly rental for the physical plant, taking into account all relevant factors necessary to meet required arms-length obligations of controlling individual such as mortgage payments, real estate taxes, special assessments, and the conditions of the physical plant. The rental fee must be paid by the receiver to the appropriate controlling individuals for each month that the receivership remains in effect. No payment made to a controlling individual by the receiver or any state agency during a period of involuntary receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

**Section 2.030 Powers and duties of the receiver.** Within 36 months after the receivership order, a receiver appointed to operate a residential program during a period of involuntary receivership will provide for the orderly transfer of the persons served by the program to other residential programs or make other provisions to protect their health, safety, and rights. The receiver will correct or eliminate deficiencies in the program that the Department determines endanger the health, safety, or welfare of the persons being served by the residential program unless the correction or elimination of deficiencies involves major alteration in the structure of the physical plant. If the correction or elimination of the deficiencies requires major alterations in the structure of the physical plant, the receiver will take actions designed to result in the immediate transfer of persons served by the program. During the period of the receivership, the receiver will operate the program in a manner designed to preserve the health, safety, rights, adequate care, and supervision of the persons served by the program. The receiver may make contracts and incur lawful expenses. The receiver shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the receiver's functions. No security interest in any real or personal property comprising the residential program or contained within it, or in any fixture of the physical plant, shall be impaired or diminished in priority by the receiver. The receiver shall pay all valid obligations of the residential program and may deduct these expenses, if necessary, from rental payments owed to any controlling individual by virtue of the receivership.

**Section 2.060 Fee.** A receiver appointed under an involuntary receivership is entitled to a reasonable receiver's fee as determined by the court. The receiver's fee is determined in accordance with Attachment 4.19-D. The receiver is liable only in an official capacity for injury to person and property by reason of the conditions of the residential program. The receiver is not personally liable, except for gross negligence and intentional acts.

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**Section 2.070 Termination.** An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court or when any of the following occurs:

A. The Department determines that the program's license application should be granted or should not be suspended or revoked.

B. A new license is granted to the program.

C. The Department determines that all persons residing in the program have been provided with alternative residential programs.

**Section 2.080 Emergency procedure.** If it appears from the petition filed or from the affidavit filed with the petition or from testimony of witnesses under oath, that there is probable cause to believe that an emergency exists in a program, the court shall issue a temporary order for appointment of a receiver within five days after receipt of the petition. Notice of the petition must be served on the residential program administrator and on the persons designated as agents by the controlling individuals to accept service on their behalf. A hearing on the petition must be held within five days after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

**Section 2.090 Rate adjustment recommendation.** The Department may recommend and adjustment to the rates of a program under involuntary receivership in accordance with Attachment 4.19-D.